

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

GARY LEE SMITH,

Petitioner,

-against-

WARDEN,

Respondent.

20-CV-3244 (CM)

TRANSFER ORDER

COLLEEN McMAHON, Chief United States District Judge:

Petitioner, currently incarcerated at Mohawk Correctional Facility, brings this *pro se* petition for a writ of *habeas corpus* under 28 U.S.C. § 2254 challenging the constitutionality of his 2016 conviction in the New York Supreme Court, Suffolk County. Because Petitioner was convicted and sentenced in Suffolk County, which is located in the Eastern District of New York, this action is transferred under Local Rule 83.3 to the United States District Court for the Eastern District of New York.

The Clerk of Court is directed to mail a copy of this order to Petitioner and note service on the docket. The Clerk of Court is further directed to transfer this action to the United States District Court for the Eastern District of New York. Whether Petitioner should be permitted to proceed further without payment of fees is a determination to be made by the transferee court.<sup>1</sup> This order closes this case.

Because Petitioner has not at this time made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue under 28 U.S.C. § 2253.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an

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<sup>1</sup> Petitioner did not submit an application for leave to proceed *in forma pauperis* when he filed this petition.

appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444–45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: April 29, 2020  
New York, New York

A handwritten signature in black ink, appearing to read "Colleen McMahon", written over a horizontal line.

COLLEEN McMAHON  
Chief United States District Judge